

# **EXHIBIT 3**

**CONFIDENTIAL**

In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

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CUSTODIA BANK, INC., :  
: :  
Plaintiff, : :  
: Case No.:  
vs. : :  
: 1:22-cv-00125-SWS  
FEDERAL RESERVE BOARD OF :  
GOVERNORS, :  
: :  
AND :  
: :  
FEDERAL RESERVE BANK OF :  
KANSAS CITY, :  
: :  
Defendants. :  
-----

"CONFIDENTIAL" DEPOSITION OF KATIE S. COX

Volume 2 of 2

DATE: December 20, 2023  
TIME: 8:42 a.m. to 3:33 p.m.  
LOCATION: King & Spalding, LLP  
1700 Pennsylvania Ave, NW  
Suite 900  
Washington, DC 20006

REPORTED BY: Felicia A. Newland, CSR

Veritext Legal Solutions  
1250 Eye Street, N.W., Suite 350  
Washington, D.C. 20005

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1 Q Okay. And how much time did you prep  
2 for your expert deposition?

3 A So I worked directly with Williams &  
4 Connolly probably at least I would say 20-some  
5 hours. And then I probably -- I spent about  
6 another, it was probably 15 to 20 hours on my own  
7 going through depositions and all the documents  
8 that have been sent to me.

9 Q Okay. Have you billed for your time  
10 already?

11 A I've only billed for the 33 hours for  
12 the expert report, the larger -- the first expert  
13 report. I have not billed for the second expert  
14 report and the testimony.

15 Q Okay. And how do you submit your  
16 bills? Do you -- do you send Custodia an invoice?

17 A Yes, Custodia receives an invoice  
18 from me.

19 Q And how many have you sent them, do  
20 you know?

21 A I've just sent them one, and that was  
22 for the 33 hours for the first report.

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1 Q Okay.

2 MS. CARLETTA: I think I've seen one,  
3 Lauren. Is that the only --

4 THE WITNESS: And that's the only  
5 one --

6 MS. WEINBERGER: Yes.

7 MS. CARLETTA: Okay.

8 THE WITNESS: -- that's out there.

9 BY MS. CARLETTA:

10 Q Okay. And then when you submit  
11 others, we would request a copy of those.

12 Okay. So we touched on your  
13 retainer. You also have stock options. Is that  
14 correct?

15 A Yes, I do have stock options.

16 Q And what are the -- can you tell me  
17 about those stock options again?

18 A Yes. So the way the stock options  
19 initially worked, for the first 25 months, I would  
20 receive 1,000 stock options, exercisable at \$1.04.  
21 These shares are Class 2, non-voting shares. Then  
22 after the first 25 months, the stock option

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1 program, whatever you want to call it, changed.

2 I want to say it's like 350 shares  
3 per quarter, or something like that, like 1,500 --  
4 1,500 stock options a year, exercisable at, I  
5 think, it's \$8.33, or something like that.

6 Somewhere around \$8.

7 Q So when you say exercisable at a  
8 certain amount, do you mean that it won't fluctuate  
9 with the value of Custodia over time?

10 MS. WEINBERGER: Object to form.

11 THE WITNESS: So it means if I want  
12 to purchase -- exercise my stock options, I have to  
13 pay \$1.04 for the -- for the first 25,000 --

14 BY MS. CARLETTA:

15 Q Uh-huh.

16 A -- and then any shares after that, I  
17 have to pay \$8 a share --

18 Q I see. I see.

19 A -- to -- to exercise those stock  
20 options.

21 Q Okay. And would it be fair to say  
22 that the value of your stock options depends on the

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1 outcome of this litigation?

2 MS. WEINBERGER: Object to form.

3 THE WITNESS: So I have no idea what  
4 these shares are worth for a couple reasons. The  
5 shares aren't publicly traded.

6 BY MS. CARLETTA:

7 Q Uh-huh.

8 A These are what I would call an  
9 inferior class of shares. It's Class 2,  
10 non-voting. Only -- right now if everyone had  
11 exercised their options, only -- it would only  
12 represent like 5 percent of all common stock within  
13 Custodia's common stock, you know, balance. And so  
14 I have no idea what they're worth.

15 And also, my shares were -- the  
16 exercise price is based on what the price of the  
17 shares were worth for the voting common at the  
18 time.

19 Q At the time of what?

20 A At the time that the -- of the first  
21 stock issuance that -- because the overall issuance  
22 that Custodia had. So the first stock option --

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1                   the research department will assign the proposal to  
2                   an economist.

3                   Now, the reason why there's this  
4                   division among the four -- the reason why there's a  
5                   separation of work among the four divisions at the  
6                   Board is because each division has responsibilities  
7                   for different statutory factors.

8                   So if it's a state membership, for  
9                   example, then someone in the Division of Consumer  
10                  and Community Affairs is going to be looking at  
11                  compliance with the Community Reinvestment Act,  
12                  what that rating is. They would also be looking at  
13                  consumer compliance ratings. And if the  
14                  institution is large enough, ratings from the  
15                  Consumer Financial Protection Bureau. That goes  
16                  in -- you know, the analysis for a -- for example,  
17                  a membership and also for a bank holding company  
18                  formation.

19                  My section would look at financial  
20                  and managerial factors and Bank Secrecy Act  
21                  compliance. The legal division is going to look to  
22                  permissibility and if it's -- if they're going to

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1                   be conducting some sort of different activity  
2                   within the state member bank. And then for the  
3                   master account, they have the primary  
4                   responsibility for looking at the eligibility  
5                   factor.

6                   Q         Okay. And so for the master account,  
7                   would your division analyze anything about the  
8                   master account request or would that go to Board  
9                   Legal?

10                  A         Board -- so our group -- like I said  
11                  yesterday, our section is going to be -- would be  
12                  in charge of the -- any briefing document that  
13                  has -- that -- that -- that if it's -- if one's  
14                  needed to brief senior officers or the -- or the  
15                  governors.

16                  And then our section would also be  
17                  responsible for compiling the recommendation  
18                  document. And so Board Legal would be responsible  
19                  for the master account, providing the input for  
20                  the -- for that statutory factor for the master  
21                  account.

22                  Q         I see.

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1                   And so your role would be summarizing  
2                   what Board Legal's analysis was on the legal --

3                   A        Right.

4                   Q        -- eligibility --

5                   A        Uh-huh.

6                   Q        -- component of it?

7                   A        Yes. And also moving the proposals  
8                   along.

9                   Q        Okay.

10                  A        So that's -- that -- the -- getting  
11                  request letters out for additional information --

12                  Q        Uh-huh.

13                  A        -- that also comes from my section,  
14                  the section I worked in, the M&A section. So most  
15                  proposals, when you receive them, aren't -- don't  
16                  answer every question or raise questions that --  
17                  staff at the Board will write, you know, "We need  
18                  extra information about this, this, this and that."  
19                  And so we'll also coordinate the correspondence  
20                  going back and forth to the applicant.

21                  Q        Okay. Would you generate questions  
22                  on the master account or would Board Legal do that?

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1           A       Board Legal would more than likely --  
2                   because the only thing they're working towards --  
3                   or should be working towards is the eligibility  
4                   determination.

5           Q       Just so I understand, is this file  
6                   system you're talking about called FedEZFile or  
7                   E-Apps?

8           A       Yes.

9           Q       Okay. And are you -- is it your  
10                  testimony that those -- the FedEZFile -- that's  
11                  what it's called, yeah, the FedEZFile has master  
12                  account requests logged into them?

13           A       So --

14                  MS. WEINBERGER: Object to form.

15                  THE WITNESS: Yeah. So FedEZFile was  
16                  implemented after -- that's a new system that was  
17                  implemented after I retired, so I can't speak to  
18                  the EZ File.

19                  BY MS. CARLETTA:

20           Q       So you're talking about E-Apps then?

21           A       Yeah, I'm talking about E-Apps.

22           Q       Okay. And is it your testimony that

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1           E-Apps has master account requests logged into  
2           them?

3                   MS. WEINBERGER: Object to form.

4                   THE WITNESS: So I don't recall  
5                   exactly how -- how the master accounts were logged  
6                   in. I mean, we would know they're there, whether  
7                   it's in E-Apps or there's some sort of notation.

8                   But you'd know that there's this --

9                   BY MS. CARLETTA:

10                  Q         Would you know that all master  
11                   account requests are in E-Apps or just the ones --  
12                   strike that. Let me back up.

13                   Is E-Apps a -- like a Board filing  
14                   system?

15                  A         No. It's a systemwide compliance  
16                   system.

17                  Q         So would all master account requests  
18                   be logged in E-Apps?

19                  A         So the --

20                   MS. WEINBERGER: Object to form.

21                   THE WITNESS: Right. So the reserve  
22                   banks log that into -- they're the ones responsible

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1 for logging the document, the filings, into E-Apps,  
2 and I don't recall how they did master accounts.

3 BY MS. CARLETTA:

4 Q Okay. So you told me you worked  
5 on -- or I'm sorry, you told me you were aware of  
6 several master account requests during your time at  
7 the Board of Governors. Is that right?

8 MS. WEINBERGER: Object to form.

9 THE WITNESS: So I reference the two  
10 I recalled working on.

11 BY MS. CARLETTA:

12 Q Okay. And what two were those?

[REDACTED]

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This figure is a horizontal bar chart illustrating the distribution of 1000 samples across 10 different categories. The x-axis represents the sample index, ranging from 1 to 1000. The y-axis represents the category index, ranging from 1 to 10. Each bar's length indicates the frequency of a sample in a specific category. The distribution is highly skewed, with most samples falling into a few categories, while many categories have no samples at all.

| Category | Sample Count |
|----------|--------------|
| 1        | 1000         |
| 2        | 1000         |
| 3        | 1000         |
| 4        | 1000         |
| 5        | 1000         |
| 6        | 1000         |
| 7        | 1000         |
| 8        | 1000         |
| 9        | 1000         |
| 10       | 1000         |

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The figure consists of a series of 20 horizontal bars, each representing a different data point. The bars are all colored a uniform gray. They vary in length, with some being significantly longer than others. A few of the shorter bars have small, separate gray segments attached to their right ends, which appear to be slightly darker than the main body of the bar.

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ANSWER

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This figure is a horizontal bar chart illustrating the distribution of 1000 samples across 10 different categories. The x-axis represents the sample index, ranging from 1 to 1000. The y-axis represents the category index, ranging from 1 to 10. Each bar's length indicates the frequency of a sample belonging to a specific category. The distribution shows that most samples belong to categories 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, while category 0 has very few samples.

| Category | Sample Count |
|----------|--------------|
| 0        | ~10          |
| 1        | ~100         |
| 2        | ~100         |
| 3        | ~100         |
| 4        | ~100         |
| 5        | ~100         |
| 6        | ~100         |
| 7        | ~100         |
| 8        | ~100         |
| 9        | ~100         |
| 10       | ~100         |

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4 BY MS. CARLETTA:

5 Q So who at Board Legal would you  
6 typically work with?

7 MS. WEINBERGER: Object to form.

8 THE WITNESS: So Board Legal has -- I  
9 usually worked with the senior attorneys, and then  
10 they worked directly for the general counsel.

11 BY MS. CARLETTA:

12 Q Okay. Can you name some names of who  
13 you typically worked with?

14 A Well, there's -- there's like 20 or  
15 30 of them.

16 Q Did you typically work with Jason  
17 Hinkle?

18 A No, I did not work with -- I don't  
19 recall working with Jason Hinkle.

20 Q Okay. And Stephanie Martin?

21 A I -- yes, our paths crossed on --  
22 particularly on [REDACTED].

1 Q Okay. Any other occasions?

2 A Well, yeah. I mean, I've been in  
3 meetings with her on other matters, but exactly  
4 what, I don't remember, but yeah, I've worked with  
5 Stephanie.

6 Q Is she someone you worked with  
7 frequently or is it other attorneys you think you  
8 worked with more frequently?

9 A I worked with other attorneys more  
10 frequently than her.

11 Q And did you work frequently with  
12 Asad, for example?

13 A Yeah, I worked with Asad, Asad  
14 Kudiya. He came in later in my career, maybe the  
15 last three years or four years or so, but I worked  
16 with Asad quite a bit.

17 Q Okay. Were there any other novel  
18 master account requests that you saw during your  
19 time at the Board?

20 A Those are the two that I can recall  
21 that -- those are the two that I recall that were  
22 similar to -- or have similar characteristics to

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1                   Custodia. The others, there's nothing that  
2                   particularly stands out.

3                   Q         Okay. Can you explain to me what the  
4                   difference is between mergers and acquisitions and  
5                   RBOPS at the Board?

6                   A         I can -- there's -- so let me  
7                   explain. There's 15 divisions at the Board.

8                   Q         Okay. And I don't need all 15.

9                   A         Yeah, I know. So the problem is --

10                  Q         Unless you guys want to give me more  
11                  time.

12                  A         There's 15 divisions. So I know in  
13                  particular what my division's --

14                  Q         Okay.

15                  A         -- functions were. But RBOPS, I have  
16                  a general -- you know, a general understanding that  
17                  they work on payment systems, systemwide payment  
18                  systems matters for the Federal Reserve. But, you  
19                  know, that's -- you know, that's not -- it -- it  
20                  would be difficult for me to go into a lot of  
21                  detail as to what they do.

22                  Q         Okay. So you know they generally

1                   work on payment system issues. Do you know  
2                   anything else?

3                   A         I don't know a whole lot more about  
4                   them.

5                   Q         Okay. So at a reserve bank -- you  
6                   worked at the Federal Reserve Bank of Kansas City?

7                   A         Yes.

8                   Q         And were you aware of an applications  
9                   division?

10                  A         Well, yes, I am.

11                  Q         And you worked in that division?

12                  A         No, I didn't.

13                  Q         You worked in supervision?

14                  A         I worked in supervision.

15                  Q         Okay. And were you aware of a Credit  
16                  Risk Management Division?

17                  A         Yes, I was aware of them.

18                  Q         And do you know what the applications  
19                  division typically handled?

20                  A         So are you asking me what the  
21                  applications equivalent of the M&A function within  
22                  the Kansas City reserve bank does?

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1                   Is that what you're asking?

2                   Q        Is M&A the equivalent -- is M&A the  
3                   counterpart to applications in a reserve --

4                   A        Uh-huh.

5                   Q        -- bank?

6                   I see.

7                   A        Correct.

8                   Q        That's great.

9                   Sure, if you can give me a brief  
10                  explanation, that would be helpful.

11                  A        So the applications function at any  
12                  reserve bank handles about probably 40 different  
13                  types of applications that come into the system.

14                  Q        Okay. Is master accounts one of  
15                  them?

16                  A        Most -- most of those are -- it goes  
17                  straight to what they call the Reserve Bank at  
18                  Kansas City, the Credit Reserve Risk and  
19                  Management.

20                  Q        And is the Credit Reserve Risk and  
21                  Management department, is there, let's say -- you  
22                  know, loose language, but let's say, is their

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1 walk --

2 A Okay.

3 Q -- through each of them.

4 So did you ask -- did you ask counsel  
5 for documents showing that the Board determined  
6 whether Custodia Bank was eligible for a master  
7 account?

8 MS. WEINBERGER: Object to form.

9 THE WITNESS: So I asked for the  
10 documents I just mentioned. The ones that -- that  
11 show the different avenues or angles that the Board  
12 was using to control the master account application  
13 process.

14 BY MS. CARLETTA:

15 Q Okay. Did you listen to or review  
16 transcripts from Caitlin Long, Zev Shimko or Peter  
17 Conti-Brown's depositions?

18 A No, I did not.

19 Q Okay.

20 MS. CARLETTA: You know, I think this  
21 might be -- we're going to get into some documents,  
22 but I think this might be a good time to take a

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1           real quick break. Does that sound good?

2           THE WITNESS: Yes.

3           MS. CARLETTA: Okay. Great.

4           (Recess from 9:35 a.m. to 10:19 a.m.)

5           MS. CARLETTA: Back on the record.

6           BY MS. CARLETTA:

7           Q       Katie, are you ready?

8           A       Yes.

9           Q       Thank you.

10           So, Katie, have you ever seen  
11           policies that the reserve banks had concerning  
12           master account requests before the guidelines?

13           A       No, I did not see those policies.

14           (Cox Deposition Exhibit Number 319 marked  
15           for identification.)

16           BY MS. CARLETTA:

17           Q       Okay. And I'm going to have you turn  
18           to what's been marked as Exhibit 319.

19           A       What tab?

20           Q       And it's Tab 4 --

21           A       Uh-huh.

22           Q       -- in the documents in front of you.

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1 A Uh-huh.

2 Q Okay. And this is the Federal  
3 Reserve Bank of New York Account and Financial  
4 Services Handbook. Is that right?

5 A That's what it says.

6 Q Okay. And it's dated February 25th,  
7 2020. Is that right?

8 A That's what it says.

9 Q Okay. And have you ever seen this  
10 before?

11 A I retired four days after this was  
12 issued.

13 Q Okay. And was this provided to  
14 you -- did you review this as part of your  
15 expert --

16 A No, I did not.

17 Q -- materials?

18 Okay. And I'll represent to you that  
19 this is a publicly available handbook. And why  
20 don't we take a look at page -- the first page. In  
21 the introduction it says, "The Federal Reserve Bank  
22 of New York assesses, manages, and mitigates the

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1                   risks that arise in connection with its decision to  
2                   provide in its sole discretion accounts for Federal  
3                   Reserve Financial Services to a financial  
4                   institution.

5                         "Among other things, the Federal  
6                   Reserve Bank of New York may assess (i) any risk  
7                   posed to FRBNY or the Federal Reserve System by the  
8                   provisions of accounts or Federal Reserve Financial  
9                   Services to a financial institution, (ii) the  
10                  effectiveness of any control or other mitigant  
11                  designed to allay such risks, and (iii) whether the  
12                  provision of accounts for Federal Reserve Financial  
13                  Services to a financial institution would cause  
14                  FRBNY or the Federal Reserve System to violate any  
15                  applicable law or," so on and so forth."

16                         Do you see that here?

17                         A           Yes, I do.

18                         Q           Okay. And then do you see where it  
19                  says, "To assess, manage, and mitigate the risks  
20                  involved in the provision of the accounts or the  
21                  Federal Reserve Financial Services, FRBNY may  
22                  consider among other things the factors set forth

1 MS. WEINBERGER: Object to form and  
2 foundation.

21 Q Okay. And did you ask Williams &  
22 Connolly to provide you with any policies and

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1           procedures that the Federal Reserve Bank of Kansas  
2           City would have used in connection with deciding  
3           whether or not to grant or deny master account  
4           requests?

5                         MS. WEINBERGER: Object to form.

6                         THE WITNESS: So I -- right. So I  
7           did not ask for the procedures manuals that Kansas  
8           City's CRM unit, whatever they -- whatever they  
9           used. Because, as I've said before, there's only  
10          one statutory factor, and after that statutory  
11          factor is decided, and the master account is  
12          granted, I understood there was risk management  
13          analysis being performed.

14                         BY MS. CARLETTA:

15                         Q           So you --

16                         A           But, you know, that's after you're --  
17           you're determined to be eligible and you receive  
18           your master account.

19                         Q           It's after you receive your master  
20          account or before you receive your master account?

21                         A           So I don't know what their -- what  
22           their process is, but it should be after you're

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1           determined that you're eligible, that's the only  
2           statutory factor that the Fed has. You should be  
3           granted your master account immediately and then  
4           all of this can proceed.

5           Q       So is --

6           A       They can go through and figure out  
7           for the purposes of providing whatever products and  
8           services the Federal Reserve wants to provide that  
9           institution. You're not going to be providing the  
10          same services to a 10-million-dollar bank in the  
11          middle of Nowhere, Nebraska -- I've been to  
12          those -- as you would be to an institution like  
13          Bank of America. And I've been on those exams.

14          Q       Okay. So is it your opinion --

15          A       So it's just different.

16          MS. WEINBERGER: Please.

17          THE WITNESS: It's different.

18          MS. WEINBERGER: Please don't --

19          THE WITNESS: That's what this should  
20          be. This is the purpose of this, is determining  
21          the level of products and services. That's what  
22          the purpose -- that's what this should be doing.

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1           If they're adding all this other stuff, then  
2           they're not following the law, and they're not  
3           following what Congress authorized them to do.

4           BY MS. CARLETTA:

5           Q       I see.

6                   So it's --

7           A       But they --

8           Q       So it's your opinion that there's one  
9                   statutory factor that determines whether or not a  
10                  master account request should be opened?

11           A       Yes.

12           Q       Is that your --

13           A       I've said that for two days.

14           Q       Is that your own reading of the  
15                  statute?

16           A       Yes. And we -- and --

17           Q       Did you receive that legal advice  
18                  from the Board?

19           A       No.

20                   MS. WEINBERGER: Object to form and  
21                  foundation.

22                   THE WITNESS: So when you work for

1           in federal court right now --

2           A       Yes, I do.

3           Q       -- on the question of who decides  
4                   master account requests?

5                   MS. WEINBERGER: Object to form.

6                   THE WITNESS: Yes, I understand that.

7                   BY MS. CARLETTA:

8           Q       Okay. And this case is before a  
9                   federal judge?

10          A       Yes, I do.

11          Q       And you understand that the judge  
12                   will analyze the statutes in this case?

13          A       Yes, I do.

14          Q       Okay. Including the statutory  
15                   provisions that we've discussed?

16          A       I hope he does.

17          Q       Okay. And the Monetary Control Act  
18                   that --

19          A       I certainly hope he does.

20          Q       Okay. Great.

21                   And you understand it's the judge's  
22                   role to determine the meaning of the statute?

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1           A       Yes. And I would -- and I'm looking  
2           forward to that.

3           Q       Okay. And that's not your job?

4           A       That's not my job. I'm looking  
5           forward to him doing his job.

6           Q       And you would defer to Judge Skavdahl  
7           in determining the statutory language?

8                   MS. WEINBERGER: Object to form.

9                   THE WITNESS: I will participate as  
10           asked in any legal proceedings, and I will see what  
11           happens.

12                  BY MS. CARLETTA:

13                  Q       Okay. And so you weren't aware of  
14           all of these policies and procedures that the  
15           reserve banks were engaging in to conduct risk  
16           assessments before opening master account requests.  
17           Is that correct?

18                   MS. WEINBERGER: Object to form.

19                   THE WITNESS: So like I said  
20           before --

21                  BY MS. CARLETTA:

22                  Q       That's a yes-or-no question.

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1 A No.

2 Q You weren't --

3 A I was aware that the -- I was aware  
4 that divisions, like the Credit Risk Management  
5 Group, did do analysis after an institution  
6 receives its master account in order to determine  
7 what products and services the Federal Reserve --  
8 and what level of products and services the reserve  
9 bank would provide.

10 Q But you weren't aware they did them  
11 before?

12 MS. WEINBERGER: Object to form.

13 BY MS. CARLETTA:

14 Q Unless they would --

15 A I don't know what they were doing  
16 before. I know what they were doing once an  
17 institution is in their shop.



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The image consists of a series of horizontal grey bars of varying lengths, arranged vertically. Some bars have small vertical grey markers at their ends or midpoints. The bars are set against a white background with a thin vertical grey border on the left side.

1                   A        I don't -- that's your  
2                   interpretation, but I don't know who wrote this. I  
3                   don't know if they're actually using this. And  
4                   they could -- they can write whatever they want --

5                   Q        And it was --

6                   A        -- in here -- someone can write what  
7                   they want in here, but whether that is the legal  
8                   process or not, that -- I mean, I've worked on  
9                   documents like this, and you put in there what you  
10                  want to do and want to look at often. And it may  
11                  not be correct. But we don't even know who wrote  
12                  this.

13                  Q        Okay.

14                  A        We don't know if they're using it  
15                  every day, from what I can tell.

16                  Q        But we do know --

17                  A        I didn't see anything --

18                  Q        -- that they revise it regularly?

19                  MS. WEINBERGER: Object to form and  
20                  foundation.

21                  THE WITNESS: Well, I don't know who  
22                  "they" is.

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1 BY MS. CARLETTA:

2 Q It's been revised multiple times.

3 A Right. Well, who --

4 Q This document has been revised many  
5 times.

6 A Who revised it? Who issued this?

7 How often does someone use it? There are manuals  
8 galore within the Federal Reserve System, and a lot  
9 of them sit on the shelf.

10 Q And you haven't seen any of them on  
11 master account requests prior to the guidelines  
12 that's --

13 A I have not seen the ones that you  
14 have presented here.

15 Q Okay. You didn't receive any  
16 training on master account requests when you were  
17 in mergers and acquisitions. Is that correct?

18 MS. WEINBERGER: Object to form.

19 THE WITNESS: No, that is not true.

20 BY MS. CARLETTA:

21 Q What training did you receive on  
22 master account requests review when you were a

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1 manager?

2 A You know, we have gone over this, how  
3 the process works. Okay?

4 Q But you told me --

5 A There is a standard process for  
6 looking at every single proposal that comes into  
7 the Federal Reserve System. And I don't -- if we  
8 want to spend the time for me to go through the  
9 whole process --

10 Q I don't.

11 A Okay. Well, because that's -- the  
12 training -- the training is -- I don't even know  
13 where to start.

14 Q You stand on your prior testimony.  
15 Is that right?

16 A Yes, I will stand on my prior  
17 testimony.

18 Q Okay. Let's continue.  
19 I'm going to -- this, we're looking  
20 at Tab 7 now.

21 A Uh-huh.

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1                   Custodia's case is creating policy and is creating  
2                   hurdles, it's giving itself all kinds of authority.  
3                   And the Board is controlling that.

4                   So yeah, they can say it's subject to  
5                   approval by the financial institution's  
6                   Administrative Reserve Bank. Well, yes, the  
7                   president of that reserve bank signs the approval  
8                   letter, but there's a whole lot more going on  
9                   behind that, particularly for novel institutions  
10                  like Custodia.

11                  Q         So is it your testimony that the  
12                  Federal Reserve System doesn't follow its own  
13                  policies and procedures?

14                  MS. WEINBERGER: Object to form.  
15                  Mischaracterizes prior testimony.

16                  THE WITNESS: Well, that's a very  
17                  broad statement. What I'm stating is in Custodia's  
18                  case, that's not what happened. A reserve bank  
19                  president signed the letter, but all -- I have --  
20                  at least, you know, six or -- six ways that the  
21                  Board -- there's six ways that the Board  
22                  controlled --

1 BY MS. CARLETTA:

2 Q Did you review Christi May-Oder's --

3 A -- the master account.

4 Q -- deposition transcript before you  
5 rendered your opinion in your initial expert  
6 report?

7 A I did not have access to her  
8 testimony until I wrote the second one, the  
9 handbook.

10 Q And you didn't review Esther George's  
11 transcript before you rendered your initial report?

12 A Before I wrote this? I did not have  
13 her transcript.

14 Q And you didn't review Judith Hazen's  
15 testimony?

16 A I reviewed -- I reviewed all of -- I  
17 reviewed at least -- I reviewed nine different  
18 depositions after I had written this -- the first  
19 expert witness document.

20 Q But not before?

21 A That's correct.

22 Q Are you familiar with Operating

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1 Circular 3?

2 A Where is that?

3 Q I'm just asking if you have a general  
4 familiarity with --

5 A No, I'm not familiar with Operating  
6 Circular No. 3.

7 Q How about Operating Circular No. 4?

8 A No, I'm not.

9 Q How about Operating Circular No. 5?

10 A No, I'm not.

11 Q So let's turn to page 9 of your  
12 report for a moment.

13 MS. WEINBERGER: If we reach a good  
14 breaking point, I think we've been going for about  
15 an hour.

16 MS. CARLETTA: Let's go off the  
17 record for a second.

18 (Discussion had off the record.)

19 BY MS. CARLETTA:

20 Q So on page 9 of your report --

21 A Uh-huh.

22 Q -- paragraph 24 --

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1 A Uh-huh.

2 Q -- you say, "Rather than simply  
3 process the request for a master account, as is  
4 typically the case for eligible depository  
5 institutions, the reserve banks subjected Custodia  
6 to a safety and soundness examination."

7 A Do you see that?

8 Q Yes.

9 A How do you know what reserve banks  
10 typically do when it's reviewing a master account  
11 request?

12 A Right. So if you're a de novo  
13 institution applying for a master account, the  
14 chartering authority would conduct the -- would  
15 conduct the exam.

16 Q So if the reserve banks merely  
17 process requests, why would they have all these  
18 policies that we just went through?

19 MS. WEINBERGER: Object to form.

20 THE WITNESS: Right. Well,  
21 they're -- the way I read those, and I just skimmed  
22 them, they're relying on safety -- whatever safety

1                   hours.

2                   MS. WEINBERGER: I think we should  
3                   proceed with your questioning, give her the chance  
4                   to answer.

5                   Do you want to read back --

6                   BY MS. CARLETTA:

7                   Q         What policy determinations did the  
8                   Board make that determined Custodia's master  
9                   account request?

10                  A         So what the Board did was it came up  
11                  with a handbook for dealing with master accounts  
12                  and it also came up with guidelines. And the  
13                  guidelines are basically a policy decision.

14                  And the guidelines provide for six  
15                  elements that are going to be reviewed when the  
16                  master account is -- is -- is filed with the  
17                  reserve bank -- with the Federal Reserve and it's a  
18                  novel institution or it has a novel business plan.  
19                  So that is policy.

20                  When they -- when they published  
21                  those guidelines during the process of reviewing  
22                  Custodia's account, that's policy. They're setting

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1                   policy, and they created six new hurdles for a  
2                   company like Custodia to get over.

3                   Q         So your testimony is when you're  
4                   talking about policy determinations in your expert  
5                   report, you're talking about the guidelines in the  
6                   handbook?

7                   A         So the guidelines in the handbook are  
8                   implementing policy.

9                   Q         Okay.

10                  A         That's how it works at the Federal  
11                  Reserve. We -- we -- we design examination  
12                  procedures, we issue guidelines, we issue  
13                  regulations. That's how policies get -- are  
14                  issued. Public letters like SR Letters, that's how  
15                  policy is developed.

16                  Q         Okay. But you say, "Custodia's  
17                  master account" --

18                  A         Which page are we on?

19                  Q         I'm on page 3.

20                  A         Page 3. And what sentence?

21                  Q         "Custodia's master account -- the  
22                  above events support my opinion that the Board

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1                   ultimately controlled the decision on Custodia's  
2                   master account application because whether to allow  
3                   Custodia, a novel institution, holding custody for  
4                   crypto-assets into the reserve system was a policy  
5                   decision, which only the Board can make."

6                   So is the policy decision a question  
7                   about the custody of crypto-assets?

8                   MS. WEINBERGER: Object to form.

9                   THE WITNESS: No. The policy  
10                  decision is whether or not novel institutions  
11                  should have access to a master account.

12                  BY MS. CARLETTA:

13                  Q         So whether this involved  
14                  crypto-assets is not a policy determination that  
15                  you're referencing in your expert report?

16                  A         That --

17                  MS. WEINBERGER: Object to form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 BY MS. CARLETTA:

6 Q Okay. So when you said yesterday  
7 that matters of policy are decided exclusively by  
8 the Board, what did you mean by "matters of  
9 policy"?

10 MS. WEINBERGER: Object to form.

11 THE WITNESS: So only the Board can  
12 make policy. That's what I'm stating.

13 BY MS. CARLETTA:

14 Q Okay. So I'm just trying to  
15 understand the logic of your opinion. You  
16 testified that the -- there's only one statutory  
17 factor to consider when determining a master  
18 account request. Is that correct?

19 A Uh-huh. That's correct.

20 Q The Board determines that statutory  
21 factor. Is that correct?

22 A The Board Legal interprets that

1                   statutory factor, uh-huh.

2                   Q         Okay. And this was a -- then the  
3                   master account request was a Board of Governors'  
4                   decision based on your testimony. Is that correct?

5                   A         That's how it turned out.

6                   Q         And it was a policy decision that the  
7                   Board of Governors made. Is that correct?

8                   A         Yes. So -- yes, it created -- so the  
9                   Board basically created new policies as to how to  
10                  review master account proposals from novel  
11                  institutions.

12                  Q         Why would it issue policies -- why  
13                  would it adopt these policies and guidelines if  
14                  there's only one statutory factor?

15                  A         Well, that's the whole crux of this  
16                  lawsuit.

17                  Q         So --

18                  A         They didn't have the authority --  
19                  they didn't have the authority to do that.

20                  Q         So it's --

21                  A         I mean --

22                  Q         -- your expert opinion that the Board

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1 didn't have the authority to issue the guidelines  
2 or the S Letter or the implementation handbook?

3 MS. WEINBERGER: Object to form.  
4 Mischaracterizes testimony.

5 THE WITNESS: So what I'm stating is  
6 the Board stepped in -- really into the shoes of  
7 the chartering authority. And the chartering  
8 authority should be doing that type of work that's  
9 explained in the guidelines.

10 BY MS. CARLETTA:

11 Q By the chartering authority, do you  
12 mean the state chartering authority?

13 A Yeah, the state chartering authority.  
14 Or it could be a national. You know, it could be  
15 the OCC. There's really three types of chartering  
16 authorities we have in -- in this country; it's the  
17 states, the territories, and the Office of the  
18 Comptroller, the currency that does national bank  
19 charters.

20 So the chartering authority should be  
21 doing it. That's their job to do that. And the  
22 Fed stepped into the chartering -- basically

1                   stepped into the chartering authority's shoes and  
2                   started doing their work.

3                   Q         So your expert opinion is that the  
4                   Board of Governors should not have -- has no legal  
5                   authority to issue the guidelines or the handbook  
6                   or the S Letter?

7                   MS. WEINBERGER: Object to form.

8                   Calls for a legal conclusion.

9                   THE WITNESS: So what I'm saying is  
10                  that, like I've said before, the Fed just has one  
11                  job here for a master account, and that's the legal  
12                  eligibility determination. That's -- that's their  
13                  only job that congress has authorized them to do.

14                  BY MS. CARLETTA:

15                  Q         Based on your review of the  
16                  Monetary --

17                  A         Based on my understanding of the  
18                  Monetary Control Act.

19                  Q         So why -- then why did they issue the  
20                  guidelines, the implementation handbook, and the S  
21                  Letter?

22                  MS. WEINBERGER: Object to form.

1 Calls for speculation.

2 THE WITNESS: Yeah, that -- you know  
3 what --

4 BY MS. CARLETTA:

5 Q You're here to serve as an expert.

6 A Uh-huh.

7 Q So in your expert opinion, why did  
8 they do that?

9 MS. WEINBERGER: Object to form.

10 Calls for speculation. And outside the scope.

11 BY MS. CARLETTA:

12 Q You can answer.

13 A So having worked at the Board for a  
14 long time, sometimes they go down rabbit holes.  
15 And it's a bad decision to go down those rabbit  
16 holes. And I think what happened here is they went  
17 into a massive rabbit hole.

18 And no one at the Board stood --  
19 stood back and said, "Is this a good idea? Should  
20 we be doing this?"

21 And I've seen this happen where staff  
22 is well intentioned, and they think they're doing

1                   the right thing, but they went down this giant  
2                   rabbit hole.

3                   Q         Only the staff? The Board of  
4                   Governors wasn't involved?

5                   A         Well, the Board --

6                   MS. WEINBERGER: Object to form.

7                   THE WITNESS: So it's my  
8                   understanding -- later on I became aware, maybe it  
9                   was after this report, that Vice Chair Barr was  
10                  briefed on this, both these -- it appears that --  
11                  well, he would have been briefed on both these  
12                  proposals. You don't brief the chair -- a vice  
13                  chair on just one proposal when they're both there.  
14                  You would -- like I said before --

15                  BY MS. CARLETTA:

16                  Q         No, no. I'm talking about the  
17                  guidelines and the -- not Custodia's request, the  
18                  guidelines and the implementation handbook.

19                  A         So the Board was heavily involved in  
20                  developing those -- the guidelines, if you look at  
21                  whose -- who you call to ask for help on these  
22                  guidelines, it's only Board members -- it's only

1                   Board staffers.

2                   Q         So Board Legal wouldn't have been  
3                   involved in their development?

4                   A         Well, there's -- Board Legal  
5                   attorneys are listed on those guidelines.

6                   Q         And so your opinion is that the Board  
7                   of Governors and Board Legal and Board staff all  
8                   got it wrong when they issued the guidelines, the  
9                   implementation handbook, and the S Letter?

10                  MS. WEINBERGER: Object to form.  
11                  Mischaracterizes testimony.

12                  THE WITNESS: So I think what they  
13                  did, they all went down this rabbit hole together,  
14                  and they got -- they got stuck down in this rabbit  
15                  hole. And that's the crux of this -- I mean,  
16                  that's really the crux of this whole thing, is they  
17                  only had one job.

18                  They didn't have the chartering  
19                  authority's job. And that -- but they took on  
20                  the chartering authority's job. And whether the  
21                  Fed likes it or not, we have a dual banking  
22                  system and you have to rely on the chartering

1 authority to do their job.

2 BY MS. CARLETTA:

3 Q And that's --

4 A And that's not what they did.

5 Q And that's based on your

6 interpretation of the Monetary Control Act?

7 A No. That's based on -- it -- well,  
8 yeah, in part, but it's based on -- we have a dual  
9 banking system and each regulator in that dual  
10 banking system has a role. And the Fed's role in  
11 this was just to look at eligibility.

12 It was the State of Wyoming's job to  
13 do all the risk analysis, permissibility analysis.  
14 It's going to be their bank. It's up to them to do  
15 all that work.

16 Q Okay.

17 A And that -- that is -- that -- and  
18 the State of Wyoming put together a 771-page  
19 examination manual. I mean, this is -- they took  
20 this -- they've taken this very seriously, this  
21 SPDI charter, and how to supervise it. And they  
22 put together, to me, it looks like a very strong

1                   Hugely precedential, that indicates significant  
2                   difficulty.

3                   And he also states that they're very  
4                   worried that if they do apply -- if they do approve  
5                   Custodia, you're going to get a couple hundred of  
6                   these applications in quickly.

7                   Q         And at 13 you also say, "Reserve  
8                   banks are not deaf to such statements; in my  
9                   experience, staff are highly attuned to Board  
10                  pronouncements and act accordingly."

11                  Is that right?

12                  A         That's correct.

13                  Q         Did you ask for documents concerning  
14                  whether the Reserve Bank of Kansas City actually  
15                  considered Powell's testimony before you rendered  
16                  an expert opinion?

17                  A         No. My -- it's my experience staff  
18                  actually tunes into -- we actually -- we will  
19                  actually go and watch the testimony live. And  
20                  there's live stream throughout the -- with the  
21                  Federal Reserve's intranet system that we have.

22                  You can -- they make it available,

1           that you can go click on and watch confirmation  
2           hearings. And also be covered in the American  
3           Banker, which everyone in the Federal Reserve  
4           System gets a free subscription to. We -- everyone  
5           at the Fed, that's the first thing you do when you  
6           sit down -- most people, when you sit down at your  
7           desk, you read the American Banker to know what's  
8           going on.

9                         So it would be highly unusual for  
10                        someone at a reserve bank, particularly the Kansas  
11                       City Reserve Bank, not to have been aware of this  
12                       testimony.

13                   Q       At 14, you talk about the Narrow  
14                       Bank.

15                   A       That's correct.

16                   Q       Okay. You say, "The Narrow Bank's  
17                       business model is similar to Custodia's." Is that  
18                       correct?

19                   A       I do.

20                   Q       Okay. And if I recall correctly from  
21                       your testimony yesterday, you testified that you  
22                       were not involved in the Narrow Bank's master

1 account request. Is that correct?

2 A That's correct, I was not involved in  
3 that request. There wasn't, to my knowledge, a  
4 companion proposal with that one.

5 Q So it didn't come to the Board of  
6 Governors?

7 A It could have come to the Board of  
8 Governors, and it appeared it did, based on the  
9 letter that the New York Fed, I believe, president  
10 issued to the Narrow Bank, because that letter  
11 references that senior policy officials at the  
12 Board of Governors have expressed a strong view  
13 that the New York Fed should not approve the TNB's  
14 request for a master account. So that's what the  
15 New York Feds -- well, I guess it was the general  
16 counsel that wrote that letter.

17 Q Okay. So is that letter the basis  
18 for your opinion that interference by the Board  
19 derailed TNB's application for a master account?

20 A Yes, it is.

21 Q Okay. So you also said that -- I'm  
22 sorry. I want to back up to another question. You

1           said TNB's business model is similar to Custodia's.

2           Is that correct?

3           A       That's correct.

4           Q       How are they similar?

5           A       Well, they were both going to be  
6           charted by a state, both of them would serve  
7           institutional customers, and both of them would not  
8           have FDIC insurance.

9           Q       Are they similar in any other ways?

10          A       What?

11          Q       Are they similar in any other ways?

12          Are they structurally similar?

13          A       I don't know more than -- those are  
14          the three most common characteristics I'm aware of.

15          Q       And do you know how the Narrow  
16          Bank -- do you know what the Narrow Bank's business  
17          model is?

18          A       Yes, I do.

19          Q       What is the Narrow Bank's business  
20          model?

21          A       So their business model was to take  
22          deposits from money market fund managers and place

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| CUSTODIA BANK, INC.,          | ) |                               |
|                               | ) |                               |
| Plaintiff,                    | ) |                               |
|                               | ) |                               |
| v.                            | ) | Civil Number: 22-cv-00125-SWS |
|                               | ) |                               |
| FEDERAL RESERVE BOARD OF      | ) |                               |
| GOVERNORS and FEDERAL RESERVE | ) |                               |
| BANK OF KANSAS CITY,          | ) |                               |
|                               | ) |                               |
| Defendants.                   | ) |                               |

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**ERRATA SHEET FOR THE TRANSCRIPTS OF THE DEPOSITIONS OF  
KATIE COX**

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I, Katie Cox, have read the transcripts of my depositions taken on December 19, 2023 (“Vol. 1”) and December 20, 2023 (“Vol. 2”) in the above captioned matter and make the following corrections:

| <b>Vol.</b> | <b>Page</b> | <b>Line</b> | <b>Current Transcript</b>              | <b>Change</b>                              | <b>Reason</b>       |
|-------------|-------------|-------------|--|--|---------------------|
| 1           | 71          | 10          | Council                                | Counsel                                    | Transcription error |
| 1           | 84          | 9–10        | Division of Consumer Community Affairs | Division of Consumer and Community Affairs | Transcription error |
| 1           | 87          | 18          | Allison Crowe                          | Alison Thro                                | Transcription error |
| 1           | 95          | 16          | general council                        | general counsel                            | Transcription error |
| 1           | 97          | 1           | Ben Mickey                             | Ben McGee                                  | Transcription error |
| 1           | 110         | 2           | Ben Bader                              | Ben Bauder                                 | Transcription error |
| 1           | 182         | 6           | secondment                             | seconded                                   | Transcription error |
| 1           | 183         | 10          | secondment                             | seconded                                   | Transcription error |
| 1           | 248         | 14          | sure                                   | insured                                    | Transcription error |

| <b>Vol.</b> | <b>Page</b> | <b>Line</b> | <b>Current Transcript</b>                           | <b>Change</b>                                     | <b>Reason</b>       |
|-------------|-------------|-------------|---|---|---------------------|
| 1           | 343         | 14          | Custodia on products and services that was          | Custodia on products and services that it was     | Transcription error |
| 2           | 21          | 11          | And A lot of things                                 | And a lot of things                               | Transcription error |
| 2           | 38          | 9           | So I reference                                      | So I referenced                                   | Transcription error |
| 2           | 58          | 8           | narrowed it down farther                            | narrowed it down further                          | Transcription error |
| 2           | 87          | 8           | Territory bank of Americas                          | Territorial Bank of American Samoa                | Clarification       |
| 2           | 144         | 8           | American Bank of Samoa                              | Territorial Bank of American Samoa                | Clarification       |
| 2           | 145         | 13, 17      | American Samoa Bank                                 | Territorial Bank of American Samoa                | Clarification       |
| 2           | 164         | 7           | might sent it out                                   | might send it out                                 | Transcription error |
| 2           | 176         | 17–18       | Office of the Comptroller, the currency             | Office of the Comptroller of the Currency         | Transcription error |
| 2           | 197         | 9           | there's two ways to get a master account was to buy | there's two ways to get a master account – to buy | Transcription error |
| 2           | 197         | 14          | And we had went in with the FDIC in                 | And we went in with the FDIC and                  | Transcription error |
| 2           | 201         | 15          | hand version  | handbook version                                  | Transcription error |
| 2           | 211         | 17          | Florida charter                                     | Florida chartered                                 | Transcription error |

Dated: January 8, 2024

/s/ Katie Cox

Katie Cox